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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: LIN 03 182 50296 Office: NEBRASKA SERVICE CENTER Date: JAN 09 2007

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner did not list any information about his proposed employment on Part 6 of the petition. The petitioner was a Ph.D. student when he filed the petition. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner continues to rely on accomplishments that postdate the filing of the petition, supplementing the appeal with even more documentation in a second submission. For the reasons discussed below, we find that the petitioner has not established his eligibility for the national interest waiver as of the date of filing, the relevant date in this matter. Evidence of post filing accomplishments would have to support a new petition. In fact, we note that the petitioner is the beneficiary of an approved visa petition filed in a different classification by his employer. This decision is without prejudice to petitions filed after the petition at issue in this matter.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

As of the date of filing, the petitioner held a Master's degree in Chemical Engineering from East China University of Science and Technology and the National University of Singapore. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, chemical engineering, and that the proposed benefits of his work, reduced NO_x and SO_x emissions, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

At the outset, we note that the petitioner has supplemented the record on several occasions in addition to responding to the director's request for additional evidence. Most of the materials included in these submissions relate to achievements after the date of filing. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we cannot consider much of the materials included in the petitioner's supplemental submissions.

The petitioner received his first Master's Degree in Engineering from East China University of Science and Technology and his second Master's degree in the same subject from the National University of Singapore in January 1998. From May 1998 through January 2001, the petitioner worked as a lecturer at Temasek Polytechnic University in Singapore. The petitioner then entered a Ph.D. program at the University of Wyoming and was in his third year of that program when he filed the petition.

The petitioner submitted several letters, most of which are from faculty at the University of Wyoming and colleagues at other institutions. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

[redacted]he petitioner's advisor at East China University, asserts that the petitioner's research at the university involved removing sulfur from coal. Professor [redacted] **praises the petitioner's** research abilities, but does not assert that this work has influenced the field.

The petitioner submitted published articles and patent number 6,015,516 resulting from his polyethersulfone hollow-fiber membranes research performed while at the National University of Singapore. An alien, however, cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221, n. 7. The petitioner did not submit any letters explaining the significance of this work, although we acknowledge that the published articles from this time had been moderately cited by independent researchers as of the date of filing. Significantly, nothing in the record explains how this work relates to the petitioner's current work.

Liahona Crompton, an environmental policy consultant at [redacted] Inc., indicates that he was one of the petitioner's colleagues at Temasek Polytechnic. Mr. [redacted] praises the petitioner's teaching abilities but does not discuss any research accomplishments by the petitioner during this time.

Dr. the petitioner's graduate advisor at the University of Wyoming, discusses the petitioner's work at that institution. Dr. explains the importance of reducing the emissions of pollutants of flue gases from power plants and engines. He further asserts that the petitioner has "probed and discovered novel phenomena, and demonstrated novel concepts, which underpin the **possibility of removing such harmful pollutants with electrical discharges."** Specifically, the petitioner investigated pulsed corona discharge devices for eliminating NO_x. Dr. [redacted] references patent application 60,341,925 filed on December 18, 2001, but does not identify any industry that **has expressed an interest in licensing this patent-pending innovation.** Dr. [redacted] **also notes that the** petitioner's work is funded by the National Science Foundation, the U.S. Department of Defense and private industry. Dr. [redacted] sserts that this funding is very competitive. Any research, in order to be accepted for funding, must offer new and useful information to the pool of knowledge. It does not

follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

who assumed oversight of the petitioner's Ph.D. research at the University of Wyoming upon the death of Dr. [redacted], also discusses the potential of the petitioner's pulsed corona discharge technology and asserts that the petitioner undertook "the bulk of the direction of the day-to-day research activities."

Dr. [redacted], a member of the petitioner's Ph.D. dissertation committee, praises the petitioner's knowledge of laser-pumped dye lasers and spectrometers, tools in evaluating the details of reactions taking place in nonthermal pulsed corona reactors. Other professors at the University of Wyoming provide similar information. All of the references find the petitioner's work to be promising but fail to provide specific examples of the work's influence. For example, Dr. [redacted] "[redacted] Dean of the College of Engineering at the University of Wyoming, merely describes the pulsed corona discharge technology as "very encouraging."

In response to the director's request for additional evidence, the petitioner submitted an independent reference letter from Dr. [redacted] Chair of the Department of Chemical and Biomedical Engineering at Florida A&M University. Dr. [redacted] indicates that he has followed the petitioner's work in the literature over the past few years. Dr. [redacted] states:

> [The petitioner's] group has made new and outstanding contributions to the field, including pioneering the use of laser-induced fluorescence experiments to determine and analyze the chemical reactions occurring this system. His contributions involve a systematic analysis of the many process conditions and variable that affect the complicated non thermal plasma process. His group is one of the only major groups in the work to perform such detailed experiments to determine how the process works in terms of the coupling of the chemical reactions to the electrical discharge.

Dr. [redacted] **does not** indicate that he has been influenced by the petitioner's work or provide examples of others who have.

In a subsequent submission, the petitioner submitted evidence of citations. First, the director received this submission after the period in which to respond to the request for additional evidence had expired. No extensions of this period are permitted. 8 C.F.R. § 103.2(8). Thus, the director was not required to consider this evidence. Regardless, evidence submitted after the date of filing must still establish eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). As of the date of filing, the petitioner's pulsed corona discharge technology research had been cited only twice. We cannot consider the remaining citations, as doing so would have the untenable result of allowing researchers to obtain a priority date based on the speculation that their research will prove influential at a later date during the proceeding.

The petitioner submitted evidence that he is a member of the University of Wyoming Chapter of Tau Beta Pi for "distinguished scholarship and exemplary character while a student." The petitioner also was honored by the University of Wyoming for Best Oral Presentation at the First Annual Graduate Student Symposium. Membership in a professional association and recognition from one's peers are two criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting two, or even the requisite three criteria for that classification warrants a waiver of that requirement. *See generally Matter of New York State Dep't of Transp.,* 22 I&N Dec. at 222. Moreover, these accomplishments do not reflect any recognition beyond the University of Wyoming.

The petitioner also received several student scholarships. Scholarships are typically awarded based on past academic performance. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6.

On appeal, the petitioner relies on citations, many of which postdate the filing of the petition, and an Outstanding Dissertation Award that also postdates the filing of the petition. We cannot consider this evidence as it does not relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The petitioner also submitted new reference letters, which we will consider insofar as they discuss accomplishments prior to the date of filing. Two professors from the University of Wyoming reiterate their previous statements regarding the importance of the petitioner's work. They focus on the significance of the petitioner's publication record. The petitioner also submits two independent letters.

Dr. [redacted] a scientist at the Institut für Umwelttechnologien in Berlin, asserts that the petitioner works in an area with national interest implications, which we acknowledge. Dr. Miessner further asserts that the petitioner's publication record is impressive, representing research that has broadened and deepened our "understanding and applications of nonthermal plasma technology in the area of pollution control." Dr. [redacted]**s letter, dated approximately two years after the petition** was filed, appears to be based on a review of the petitioner's current credentials rather than his prior awareness of the petitioner's work in the field.

Dr. [redacted] Head of the Department of Chemistry at the University of Connecticut, also discusses the importance of the petitioner's area of research and the impressive nature of his **publication record. Significantly, however, Dr. [redacted] merely speculates as to the impact of the** petitioner's project, stating: "the extremely novel technology *proposed* by [the petitioner] and his collaborators *should* provide the first wholly satisfactory approach for lean, burn automobile

technologies." (Emphasis added.) Dr. [redacted] does not indicate that any industry has expressed any interest in testing and applying the petitioner's technology.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not reflect that, as of the date of filing, the petitioner had already influenced the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.